

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
NOVEMBER 24, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:40 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Julia James, Administrative Services Director; Victor Peterson, Environmental and Community Development Director; Paul Adams, Parks and Recreation Director; Yugal Lall, Public Works Director; Michael Teruya, Planning Manager; Scott Albright, Senior Planner; Paul Huckabee, Senior Planning Consultant; and Mary Linden, Recording Secretary.

FLAG SALUTE

Art London led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in Closed Session at 5:30 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)

Los Angeles County Superior Court Case No. SC074641

Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
- d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
- g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
6. Colony Beach Preservation Association v. California Coastal Commission
Los Angeles County Superior Court Case No. BS083683
7. Malibu CAN v. City of Malibu (MBC Development Agreement)
Los Angeles County Superior Court Case No. BS083683
8. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Amicus)
10. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
11. Sierra Club v. City of Malibu (Forge Lodge)
Los Angeles County Superior Court Case No. BS083573
12. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
13. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)
14. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
15. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
16. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu

- Los Angeles County Superior Court Case No. BS072794
17. Trancas Property Owners Association v. City of Malibu
Los Angeles County Superior Court Case No. BS084112
18. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
19. Visher v. City of Malibu
Los Angeles County Superior Court Case No. SC078703

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

20. Number of Cases: 2

City Attorney Hogin reported that the Council discussed some but not all items listed on the Closed Session agenda and took no reportable action.

APPROVAL OF AGENDA

City Attorney Hogin requested that Item No. 4.B. be continued to February 9, 2004 at the request of the appellant.

MOTION Councilmember Jennings moved and Mayor Pro Tem Barovsky seconded a motion to approve the agenda with Item No. 4.B. continued to February 9, 2004. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

Recording Secretary Linden reported that the agenda for the meeting was posted on November 14, 2003, with the amended agenda posted on November 21, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Proclamation Declaring December 1, 2003 as World AIDS Day 2003

Mayor Kearsley presented a proclamation declaring December 1, 2003 as World AIDS Day 2003.

ITEM 2A. PUBLIC COMMENTS

Erick Myer, President of Trancas Highlands Homeowners Association, discussed health and safety concerns about drug rehabilitation facilities in Malibu.

Ryan Dorn distributed documentation from Creative Care, Inc. He discussed safety issues and high traffic concerns associated with drug treatment facilities. He requested the City investigate zoning regulations in the area of the facilities.

John Mazza discussed the contract on the Zumirez realignment. He requested staff ensure that the island created at the entrance be landscaped and abandoned asphalt removed.

Becky McKay, President of Zuma Mesa Homeowners Association, expressed the concerns of her association's members that homes up for sale may be turned into drug rehabilitation centers. She requested an update on the closure of trails.

Bruce Darian discussed alleged fraud in the development of the Malibu Pier.

Marisa Coughlan deferred her time to Mona Loo.

Mona Loo, representing the Malibu Labor Exchange, discussed problems of day laborers reviewed at a recent national convention of local day labor exchange organizations.

ITEM 2B. COUNCIL COMMENTS

Councilmember House reported that the Administration and Finance Subcommittee met twice in the past week to discuss the RFP for new financial software, health insurance benefits, CDBG funds, investment of the reserve fund and library and Sheriff's Department updates. She reported that rehabilitation centers and applicable State housing regulations have been discussed with State representatives since 1996. She recommended that community members write their State legislators to support Council's efforts, expressing the unique situation in Malibu as compared to other cities.

City Attorney Hogin explained that State laws prevent the City from changing zoning laws that would restrict further establishment of rehabilitation centers and assisted living facilities. She recommended community members write State legislators to limit the number of such homes in a given neighborhood.

Mayor Pro Tem Barovsky recommended Mr. Myers contact Chuck Williams in Big Rock regarding his past efforts to request limitations of rehabilitation facilities in given neighborhoods. She suggested the presidents of homeowners associations meet with her to establish a plan to address the problem.

In response to Councilmember House, City Attorney Hogin stated staff was working on plans to address the requests of the Zumirez community regarding landscaping and asphalt removal. City Manager Lichtig added that staff was working with the homeowners association to address their specific concerns.

Mayor Kearsley commented on reports alleging that the Council was not completing what they promised on the Zumirez realignment. He stated staff was still working on the final plans.

Mayor Pro Tem Barovsky announced that she will be prepared to make her appointment to the Trails Committee at the City Council meeting of December 8, 2003.

Environmental and Community Development Director Peterson stated that Senior Planner Kathleen Mallory was working with the Trails Committee, Public Works staff and Code Enforcement Supervisor Sumpter regarding fences being erected on trails without the proper permits or planning approval. He discussed the problem of landowners claiming that some properties in question were not trails.

City Manager Lichtig commented that an approved trail map was not included in the General Plan that was consistent with the Master Plan. In response to Mayor Pro Tem Barovsky, she confirmed that the Trails Committee was working with staff on developing the map.

Don Schmitz reported that the Trails Committee had broken into subcommittees to address concerns and would report to the Council in upcoming months. In response to Councilmember House, he confirmed that the Committee was not an enforcement body, but would report situations to Code Enforcement.

Councilmember House requested the Trails Committee report to the Council at the next meeting with suggestions and guidelines to ensure that trails are accessible.

Councilmember Stern congratulated Wells Fargo Bank on their grand reopening. He reported that the First Annual Vision Ride raised over \$10,000 for the visually impaired. He reported that all Councilmembers, Planning Commissioners, Patt Healy, John Mazza and Efrom Fader signed a letter to Mr. Jerry Perenchio requesting that the Malibu Bay company work with the City on a new agreement. He expressed disappointment that Malibu CAN President Steve Uhring and CAN's largest financial backer, Ozzie Silna, did not sign the letter. He added that it had been reported that CAN membership supported the language in the letter.

Councilmember Jennings reported that he attended the 25th Anniversary Celebration of the establishment of the Santa Monica Mountains National Recreation Area. He stated the Malibu-Las Virgenes Council of Governments held their annual sub-regional briefing, which included reports from Assemblymember Fran Pavley, Supervisor Zev Yaroslavsky, and the Fire and Sheriff's Departments. He stated the City was powerless to keep rehabilitation centers from being established in Malibu. He stated the City has expressed concerns about traffic and septic issues in the areas where the facilities are located. He suggested the City attempt to get the League of California Cities to offer support on this issue. He expressed confidence that the Zumirez community will be pleased with the final plan. He discussed fences being put up to close trails. He described regulations in the City of Hidden Hills that control the placement of fences in order to protect the trails. He expressed confusion over Mr. Darian's continued complaints to the City.

Mayor Kearsley thanked the Councilmembers, Commissioners and others who signed the letter to Mr. Perenchio. He reiterated concerns with pollution problems in Malibu Creek, Lagoon and the beaches. He added that the City must pull together to get the Malibu Bay Company back to the table to discuss solutions to ongoing problems.

ITEM 3 CONSENT CALENDAR

Item Nos. 3.B.6. and 3.B.8. were pulled by the Council. Item No. 3.B.7. was pulled by the public.

MOTION Councilmember House moved and Councilmember Stern seconded a motion to approve the Consent Calendar with the exception of Item Nos. 3.B.6., 3.B.7. and 3.B.8. The motion carried unanimously.

The Consent Calendar consisted of the following items:

A. Previously Discussed Items

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Staff recommendation: Allow and approve warrant demand numbers 23438 through 23517 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 298 in the

amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$206,646.99.

3. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Quarterly City Council meeting held on October 29, 2003.

4. Update of Resolution Authorizing Investment in Local Agency Investment Fund

Staff recommendation: Adopt Resolution No. 03-56 authorizing investment of monies in the Local Agenda Investment Fund (LAIF) and rescinding Resolution No. 01-36.

5. Annual Pavement Rehabilitation Program - Completion of Contract and Acceptance of Work

Staff recommendation: 1) Accept the work performed by Security Paving Company, Inc. on the Annual Pavement Rehabilitation Program (Specification No. 2008) as complete and authorize the Public Works Director to record the notice of completion to release all surety agreements and bonds; and 2) Appropriate an additional \$29,546.65 from the Traffic Safety fund to account number 310-9002-7901.

9. Employee Discount Policy for City Recreation Programs

Staff recommendation: Adopt Resolution No. 03-60 allowing the Director of Parks and Recreation, with the approval of the City Manager, the authority to set applicable employee discounts for City employees and their families to participate in programs offered by the Parks and Recreation Department.

The following items were pulled from the Consent Calendar for individual consideration:

ITEM 3.B.6. Consideration of Proposed 2004 Calendar of City Council Meetings

Staff recommendation: Approve the proposed 2004 Calendar of City Council meetings.

Councilmember Stern requested the quarterly meeting of April 28, 2004 be moved to April 21, 2004.

Councilmember House requested the regular meeting of April 26, 2004 be renamed as Council Reorganization Meeting.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to approve Item No. 3.B.6. as amended. The motion carried unanimously.

ITEM 3.B.7. Request for Proposals for Financial Software System
Staff recommendation: Approve the issuance of Request for Proposals (RFP) for a new financial software system.

John Mazza discussed available document imaging systems that were more cost effective options for the City and would make staff more efficient.

In response to Councilmember Jennings, City Manager Lichtig presented an update on the records management inventory. She stated that, upon completion, staff would present a recommendation for digitizing records. She added that staff was investigating integration of documents on the City website.

In response to Mayor Kearsley, City Attorney Hogin confirmed that regulations regarding retention of hardcopy records vary depending on the type of document.

Councilmember Jennings expressed concern that staff was doing research already completed by other cities. He suggested the system selected be one that allows funds to be encumbered when a purchase order is issued.

MOTION Councilmember House moved and Councilmember Jennings seconded a motion to approve the issuance of Request for Proposals (RFP) for a new financial software system. The motion carried unanimously.

ITEM 3.B.8. Exchange of Proposition A Funds for General Funds
Staff recommendation: Approve the Fund Trade Agreement with the City of West Hollywood for the exchange of Proposition A funds in return for general funds.

In response to Mayor Pro Tem Barovsky, Administrative Services Director James detailed the status of the City's Proposition A funds.

Mayor Pro Tem Barovsky requested the Council not act on this item at this time if there were no time constraints to do so. She suggested the funds be used for a shuttle system.

City Manager Lichtig explained that the sale of Proposition A funds to support the street overlay project was discussed in June. She stated that, without the Proposition A funds, the City would be putting that project on hold or would have to find another funding source.

In response to Mayor Kearsley, Public Works Director Lall stated that a delay of more than 6 months would be a problem in completing the overlay project.

Mayor Pro Tem Barovsky suggested the overlay project be funded from the General Fund.

In response to Mayor Kearsley, Public Works Director Lall described a project timeframe whereby the project would be bid in April and awarded in June 2004.

In response to Mayor Kearsley, City Manager Lichtig explained that a shuttle was not currently on the work projects list. She added that preparation work would be difficult to accomplish in the 6-month timeframe before the end of the fiscal year in which the funds must be used. She explained the process of selling the funds.

Councilmember Jennings requested staff report more details regarding alternative funding sources.

Councilmember House requested staff include a timeline for a shuttle. Councilmember Jennings suggested the matter be discussed by the Administration and Finance Subcommittee.

CONSENSUS

By consensus, Council deferred action on the Fund Trade Agreement with the City of West Hollywood for the exchange of Proposition A funds in return for general funds and referred this item to the Administration and Finance Subcommittee.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

A. Award of Community Development Block Grant Funds

Staff recommendation: 1) Conduct a public hearing; 2) authorize the use of up to \$200,000 in Community Development Block Grant (CDBG) funds for the purchase and installation of Americans With Disabilities Act (ADA) compliant, zero discharge restroom facilities at the Bluffs and Las Flores Park locations; 3) approve the purchase and installation of these facilities from Greentech; and 4) appropriate \$200,000 to a revenue account and \$200,000 to a Capital Improvement Project account.

Administrative Services Director James presented the staff report.

Mayor Pro Tem Barovsky and Mayor Kearsley expressed support for the project.

Mayor Kearsley added that he would like to see such improvements at all City parks in the future. He commended staff on their efforts.

In response to Councilmember Jennings, Parks and Recreation Director Adams described the materials used in the existing zero discharge restroom facilities at Bluffs Park.

In response to Mayor Pro Tem Barovsky, City Manager Lichtig reported that Las Flores Park was open and that the City was planning an event at the park in the near future.

MOTION Mayor Pro Tem Barovsky moved and Councilmember Stern seconded a motion to authorize the use of up to \$200,000 in Community Development Block Grant (CDBG) funds for the purchase and installation of Americans With Disabilities Act (ADA) compliant, zero discharge restroom facilities at the Bluffs and Las Flores Park locations; approve the purchase and installation of these facilities from Greentech; and appropriate \$200,000 to a revenue account and \$200,000 to a Capital Improvement Project account. The motion carried unanimously.

- B. GENERAL PLAN AMENDMENT NO. 02-002 / ZONING MAP AMENDMENT NO. 02-002 / NEGATIVE DECLARATION NO. 02-003
An Amendment to the Malibu General Plan Land Use Map from Rural Residential-20 to Rural Residential-5, and an Amendment to the Malibu Zoning Map from Rural Residential-20 to Rural Residential-5, on 68 Acres and Open Space Dedication of 57 Acres along the North side of Latigo Canyon Road, approximately 4,000 feet North of the Latigo Canyon/Pacific Coast Highway Intersection (Continued from October 27, 2003) - APPLICANT: City of Malibu; OWNER: George J. Rubens; SETTLEMENT: George J. Rubens, as trustee of the George J. Rubens and Yvonne M. Rubens Family Trust, et al, and the City of Malibu; LOCATION: North side of Latigo Canyon Road, approximately 4,000 feet North of the Pacific Coast Highway/Latigo Canyon Road intersection; GROSS ACREAGE: 68 acres
Staff recommendation: Continue the item to the February 9, 2004 Regular City Council meeting.

Upon approval of the agenda, Item No. 4.B. was continued to February 9, 2004.

- C. City of Malibu Draft Local Coastal Program 03-001 – Introduction and public workshop on the City of Malibu Draft Local Coastal Program (LCP) (July 2003) which includes a Land Use Plan and Local Implementation Plan
Staff recommendation: 1) Provide direction to staff concerning City of Malibu Draft Local Coastal Program 03-001; and 2) Set a public hearing date on January 26, 2004 for review of Local Coastal Program 03-001.

Lloyd Zola, LCP Consultant, presented the staff report.

Mayor Pro Tem Barovsky clarified that staff would consider discussion tonight before making a recommendation to the Council.

Alan Block, representing LAS Investments, discussed development along Malibu Road. He requested a revision to Policy 6.18 deleting Malibu Road and the word “continuous” from the policy. He discussed the Los Angeles County Land Use Plan of 1986.

John Mazza discussed references to ESHA buffers in LCP paragraphs 3.12 and 3.22. He expressed concern of Point Dume homeowners that the ESHA map for Point Dume designates only a gulley on Point Dume as an ESHA. He requested consistency in the designation.

John Staff discussed the history of his plans to build his home according to the LCP of 1986 and with direction from the Coastal Commission and City of Malibu staff. He discussed discrepancies between the 1986 LCP and September 2002 LCP requirements for homes built on Malibu Road.

Mary Ayerst suggested discussions of the proposed LCP be done in parts, rather than as a full document.

Shelley Luce, staff scientist for Heal the Bay, expressed disappointment in parts of the proposed LCP, including the delisting of ESHA, lack of protection for streams and removal of prohibition on stream modifications. She expressed support for a 100-foot buffer zone.

Mark Gold, Executive Director of Heal the Bay, expressed concerns about sedimentation erosion, especially in the Malibu Creek Watershed. He requested the recommendations to the City made by Heal the Bay be implemented throughout the LCP process. He indicated a letter detailing Heal the Bay's suggestions had been mailed to the City.

Norm Haynie commented on public viewshed impacts. He suggested general ordinances not be included in the LCP as they would require changes to be presented to the Coastal Commission prior to implementation.

Shary Nassimi discussed his family's plans to build a home in Malibu. He requested the Council be sure to consider individuals' wishes along with those of the City and Coastal Commission.

Tom Mathews discussed concerns with the LIP regarding development standards and stringline.

Councilmember Stern assured Mr. Nassimi that the Council was working diligently to accomplish what was necessary to help residents like him. He supported the suggestion of Mr. Block on setback. He expressed confusion about why one gulley in Point Dume had been designated as ESHA.

City Attorney Hogin reported that she had discussed the ESHA designations on the maps with the Coastal Commission attorneys. She indicated the attorneys stated that the maps were intended to create only the presumption of an ESHA.

Councilmember Jennings stated that City grading ordinances do not remove protections, as implied by Heal the Bay representatives' comments.

City Manager Lichtig added that staff would continue to update Heal the Bay about the City's tiered approach.

Mayor Kearsley expressed agreement with Heal the Bay regarding the need for the City to follow treated wastewater standards.

Councilmember Jennings requested staff clarify the definition of stream and apply that definition to provisions regarding the prohibition of stream modification and buffer zones for coastal streams, as mentioned by Heal the Bay.

Mayor Pro Tem Barovsky acknowledged problems existed with restrictions applied to Malibu Road. She stated she would support the deletion of Malibu Road from the LCP. She commented on the Coastal Commission's inconsistency regarding designation of ESHA.

In response to Councilmember House, City Attorney Hugin provided an update on the LCP process, including pending litigation and the referendum petition.

Councilmember House thanked Mr. Gold for his comments. She requested staff gather more information on in-lieu fees. She indicated support for performance bonds.

In response to Councilmember House, Mr. Zola clarified the difference between an ESHA and a natural communities conservation plan (NCCP).

Mayor Kearsley expressed support for the NCCP as a rational approach. He stated he was not in support of performance bonds due to excessive fees imposed.

Mayor Kearsley suggested a City meeting on the LCP be held prior to January 24, 2004. He recommended a Saturday morning session on January 3, 2004 to discuss changes of amendments.

Mayor Pro Tem Barovsky expressed support for the meeting suggested by Mayor Kearsley.

City Manager Lichtig expressed concern about the quality of public attendance at a meeting scheduled on a holiday weekend.

Councilmember Jennings suggested staff recommend alternative dates in January, including evenings and one Saturday.

Councilmember Jennings commented on view corridors on Malibu Road. He suggested staff change the wording to exclude those areas where you could see the ocean from Pacific Coast Highway. In response to Councilmember Jennings, Mr. Zola stated he would review the Coastal Commission's actions regarding stream protection and ESHA designation in the Point Dume area and report back to the Council.

In response to Mr. Haynie, Councilmember Jennings confirmed that the LIP was the ordinances. He added that he supported Mr. Haynie's suggestion to include flexibility to adopt the most environmentally effective proposals.

Councilmember Jennings suggested that in-lieu fees be included to mitigate problems. He recommended limiting performance bonds to areas where mitigation was being done for ESHAs and ESHA buffers. He stated the NCCP was a compromise between the Coastal Commission and the State Fish and Game Department, but was not good for Malibu. He recommended the City move forward with the tiered approach instead of the NCCP. He added that brush clearance and fire protection must be included in the final plan.

CONSENSUS

By consensus, the Council directed staff to come back with revisions to the language in the LCP consistent with what was discussed, particularly as stated by Councilmember Jennings, and for staff to come back in January with a proposed calendar for meetings to discuss the LCP.

ITEM 5 OLD BUSINESS

None.

ITEM 6 NEW BUSINESS

None.

ITEM 7 COUNCIL ITEMS

None.

ADJOURN At 9:20 p.m., Councilmember Stern moved and Councilmember House seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of the City of
Malibu on January 12, 2004.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)